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FISCAL IMPACT REPORT

SPONSOR Beam **DATE TYPED** 3/16/05 **HB** 602/aHTRC/aHAFC/aHFI#1/aHFI#2

SHORT TITLE Neighborhood Improvement District Act **SB** _____

ANALYST Hadwiger

APPROPRIATION (in \$000s)

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB307.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (AG)

State Auditor (SA)

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of House Floor Amendments #1 & #2

The first House Floor amendment to HB602 excludes nonresidential real property from neighborhood improvement districts. The second House Floor amendment would assure that no assessment against a parcel of real property not exceed the estimated benefit to the parcel.

Synopsis of HAFC Amendment

The HAFC amendment strikes the substantive portion of the HTRC amendment and inserts a new section whereby the ordinance creating a neighborhood improvement district would not become effective until approved in an election by a majority of the voters in the district voting on the question. The election would be held in conjunction with the next regular municipal election or, if sooner, in conjunction with a special municipal election for another purpose. If approved, the ordinance creating the district would remain in effect for six years and may be extended for successive six-year periods if approved again by a majority of the voters in the district. The amendment specifies city council review of the district five years after the election and, if the council determines the district should not terminate, it would set continuation of the district for election.

Synopsis of HTRC Amendment

The HTRC amendment inserts a new section to allow property owners to void an ordinance creating a neighborhood improvement district, if, within 90 day of adoption of the ordinance, a majority of the owners sign a petition in opposition to creation of the district.

Synopsis of Original Bill

House Bill 602 would allow for creation of neighborhood improvement districts (hereafter “district”) that would operate as follows:

1. A municipal governing body (council) would adopt an ordinance specifying the procedures, conditions and standards to be used to create the district including:
 - a. Acceptable purposes for a district
 - b. Time frames for submitting petitions, feasibility studies, public hearings, and final decision.
 - c. Information required for a petition proposing a district
 - d. Standards and procedures for determining the district boundaries
 - e. Additional factors to be addressed in a study of the proposed district.
2. Among other provisions, the city council would also:
 - a. Specify the responsibilities of a management committee of the district
 - b. Be authorized to allow creation of a district by a land developer who has filed a final plat, provided that, upon sale of 50 percent of the lots, the management committee would be appointed.
 - c. Potentially function in lieu of the management committee to manage the district
 - d. Provide for valuation increment financing and provide for expenditure of revenues therefrom.
3. Creation of a district:
 - a. The majority of property owners within a proposed district (exclusive of government property) could petition the city council to create the district following a specified format.
 - b. After receipt of the petition, the mayor would prepare a study of the proposed district and present same to the city council.
 - c. The city council would hold a public hearing, notifying affected property owners of the hearing and providing an opportunity for each interested person to testify at the hearing.
 - d. The city council would adopt an ordinance creating or rejecting the district. If rejected, another petition for creation of the district could not be submitted for 12 months.
 - e. The ordinance creating the district would specify improvements to be provided by the district, cost of the improvements, description of real property included in the district, assessment method to be used to finance the improvements, the amount of the initial assessment to be imposed upon each real property owner and estimate of assessments for the subsequent four tax years, description of how the district will be managed by a management committee (method of appointment, terms of members, etc.), and a description of methods to be used to account for district costs and revenues.
 - f. The ordinance may provide for valuation increment funding or the district
 - g. A management committee would be created to operate the district and file regular

reports to the city council. The management committee would be appointed pursuant to the enabling ordinance, with one member of the committee representing the mayor and the remainder being property owners in the district.

4. HB602 includes additional provisions specifying annual assessments on property owners, creation of a special account, management of the money, enforcement of assessments, regular district reviews, and deposit of the district funds in the “short term investment fund” of the state treasury.

Significant Issues

According to the Department of Finance and Administration (DFA), HB602 offers a new approach for downtown and neighborhood redevelopment in New Mexico. A neighborhood improvement district is a specific geographic boundary formed by a group of property owners working together to bring about needed capital improvements within that boundary. Improvements ranging from litter removal and sidewalks to street lights and landscaping are then paid for by the benefiting property owners using the NID process administered by the municipality. States who have authorized creation of NIDs include Florida, Idaho, Missouri, Ohio, Oregon, Pennsylvania, Washington, and Wyoming.

The Office of the Attorney General (AG) offered the following comments on HB602:

New Mexico state law already provides for improvement districts within cities (NMSA Section 3-33-1 et seq.). See also the Business Improvement District Act, NMSA Section 3-63-1 et seq.; and the Greater Municipal Parking Law, NMSA Section 3-51-1 et seq. This bill appears to duplicate many of the procedures and purposes already existing in state law for the creation of special improvement districts.

This bill would allow for the assessment and funding of temporary or transient projects such as signs, banners, decorations, public events and concerts. The New Mexico Supreme Court stated in *Waltom v. City of Portales*, 42 N.M. 433, 81 P.2d 58 (1938) that “*special assessments are quasi taxes and are laid to enable the discharge of some of the functions of government. The power to impose them is related to the taxing power.*” It may be difficult for a city council to justify assessments for banners, concerts, decorations and public events as “functions of government.”

The Supreme Court also ruled in *Bowdich v. City of Albuquerque*, 76 N.M. 511, 416 P.2d 523 (1966) that “*the only limitations on the exercise of the power of special assessment are that the improvements must be public and must confer special benefits on the property assessed. Irish v. Hahn, 208 Cal. 339, 281 P. 385. And with the cost to be borne by each tract not to exceed the estimated benefits thereto. Teutsch v. City of Santa Fe, supra.*” It also may be difficult to define the nature of the special benefits inuring to all parcels of property within the neighborhood district for temporary improvements or transient events.

The bill allows for the location of an improvement on private property within the district “if it directly and primarily benefits a public right of way or public easement.” Depending on the nature of the improvements on private property, this determination will have to be made in view of the constitutional prohibition against donating public funds in aid of private persons. See Article IX Section 14. It also might be difficult for a city council to

calculate and justify the benefit to *all* taxable real property within the district for improvements on private property.

The bill provides for continuing annual assessments on property within the district and periodic “neighborhood improvement fees.” Presumably the city council will have to determine the benefit to the property assessed each year before imposing those fees, especially with regard to temporary or transient “improvements.” The bill also authorizes a “charge” for a reserve fund for emergency expenditures. The city council will also have to justify and define the benefits to real property within the district for that charge and how that charge relates to the proposed improvements.

Unlike other improvement district laws, this bill does not provide for objection, protest and appeal procedures for real property owners. See for example NMSA Section 3-33-22. There may be certain due process issues raised by omitting those procedures. The bill would only allow landowners to appear at the hearing held to determine the creation of the district, and to “present views” on its creation.

The House Taxation and Revenue Committee amendment provides additional protections to property owners in the event that the ordinance that is ultimately adopted is not acceptable to the affected property owners. The House Appropriations and Finance Committee amendment provides additional protections to property owners by requiring an affirmative vote on the district before the ordinance creating the district would go into effect.

In the Senate floor debate on the duplicate of the original bill, concerns were raised that commercial property owners may not live within the proposed district and, therefore, would not be eligible to vote on a new neighborhood improvement district. The first House Floor amendment appears designed to address this concern by excluding nonresidential property from the districts. This may create a new concern to the extent that improvements within the district may benefit commercial establishments or that improvements might only be sensible if they include the commercial property (i.e. sidewalks that run to a corner or streetlights).

FISCAL IMPLICATIONS

The Auditor noted that there would be additional costs for annual audits of the districts to comply with the Audit Act. There would also be some additional costs to administer the elections specified in the HAFC amendment. These costs would be reduced by the requirement in that amendment that the elections coincide with another election.

ADMINISTRATIVE IMPLICATIONS

DFA indicates that HB602 contains several features that enhance its administrative utility. First, an NID can be established and an assessment imposed without a city-wide election. Second, since the city issues general obligation bonds, the public improvements can be financed at lower interest rates. Third, the city oversees the formation of each NID and approves the plans and specifications of each project and, as such, may group two or more NID projects together into one bond issue to further reduce the costs. Fourth, HB602 allows for the financing of a broad range of public improvements without a requirement that the area to be improved suffer from blight. HB602 creates a nonprofit management committee, with one member representing the mayor and other real property owners or district residents, to administer district improvements,

recommend annual assessments, and file annual fiscal reports.

The AG noted that the bill would require a coordinated effort between the county treasurer, city council, district management committee, county assessor, and property tax division of the Taxation and Revenue Department in order to implement its various assessments and fees.

OTHER SUBSTANTIVE ISSUES

According to DFA, a municipality, when seeking to improve its neighborhoods, can choose to use existing financing and administrative tools already authorized by the State of New Mexico, such as a business improvement district, or the tax increment financing (TIF) powers provided through the Metropolitan Redevelopment Code. According to analysis of Missouri's NID law, property owners under a TIF pay nothing for public improvements, but they are ultimately responsible to bondholders if the tax revenue generated by the improvements is insufficient to make the payments. The municipality, on the other hand, has no financial responsibility to the bondholders, but along with the other affected taxing jurisdictions, "pays" for improvements by foregoing a portion of the increased tax revenue until the bonds are paid off. Thus, TIF is appropriate when development is not likely to take place without the incentive that TIF offers, and where it is not financially feasible for the property owners to pay for the desired improvements.

TECHNICAL ISSUES

The Auditor identified the following technical issues:

Subsection A of Section 9, states "For a district with a management committee, the committee shall be responsible for the operation of a district, including the commencement, acquisition, construction or maintenance of district improvements. The members of the **management committee shall be appointed** pursuant to the provisions of the enabling ordinance and the ordinance creating the district; provided, however, that one member shall be appointed by and represent the mayor and the remaining members shall be real property owners or residents of the district." **It is unclear who "appoints" the management committee pursuant to the enabling ordinance. Is it the council?** This is an important point in determining whether the nonprofit corporation is a component unit of the municipality per GASB 14. This point should be clarified.

The management committee shall be a **nonprofit corporation** pursuant to the Nonprofit Corporation Act per Subsection 4 of Section 9. Subsection D of Section 9 allows a "council" to manage a district. Does a district managed by the municipal council have to be incorporated as a nonprofit corporation also? Can the reader assume that a neighborhood improvement districts managed by the council is not a nonprofit corporation; and therefore not a separate legal entity from the municipality? The answer to that question is important in determining how the district should appear in the municipal audited financial statements. This point should be clarified in the proposed statute.

Per GASB Statement No. 6 paragraph 8, it is not uncommon for local governments to finance special assessment district improvements entirely with the proceeds of general obligation debt and to levy special assessments against benefiting property owners to provide some of the resources needed to repay that debt. In contrast, HB602 creates nonprofit corporations that are component units (separate legal entities from the local government) for these

neighborhood improvement districts, and **does not address how they will finance the proposed projects**. Will the nonprofit corporation have to borrow the money? The interest rate available to such nonprofit corporations for loans will exceed the interest rate available to the local government.

ALTERNATIVES

The AG suggested consideration could be given to amending existing special improvement district laws to expand the purposes for which those districts may be established. Consideration should also be given to restricting improvements to those of a permanent nature, in order to avoid legal issues regarding benefits inuring to all real property within a district if the improvements are temporary or transient.

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